IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 27.09.2007

Coram

The Honourable Mr. Justice M. CHOCKALINGAM

W.P. No.10882 of 2007

and

W.P.M.P. No.12343 of 2006 and
W.V.M.P. No.37 of 2007

The Management
Salem District
Public Servants Co-operative
Thrift and Credit Society Limited ... Petitioner

..vs..

1. The Presiding Officer,
Labour Court,
Salem.

2. C. Raja ... Respondents

Petition under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus, to call for the records in I.D. No.110 of 1999 on the file of the first respondent herein to quash the award dated 9.5.2002 passed therein to direct the first respondent to restore I.D. No.110 of 1999 and dispose of the same in accordance with law.

For Petitioner : Mr. M.R. Raghavan

For Respondents : Mr. N.G.R. Prasad for
M/s. Row and Reddy

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O R D E R

The petitioner-Management challenges the award dated 9.5.2002 passed by the first respondent-Labour Court in I.D. No.110 of 1999.

2. Affidavit filed in support of the writ petition is perused.

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The Court heard the learned counsel appearing on either side.

3. Concedely, pursuant to the order of termination of the second respondent, who was functioning as Secretary in the petitioner-Society following a domestic enquiry on the charges of certain mis-conduct including that of misappropriation, at the instance of the second respondent, I.D. No.110 of 1999 was taken on file by the first respondent-Labour Court. After entering appearance, the writ petitioner-Management filed its counter and the matter was posted for enquiry. On the date scheduled for enquiry, the Management did not appear. Hence, an ex parte award came to be passed on 9.5.2002.

4. An application was filed to set aside the ex parte award along with an application to condone the delay, which occasioned in making such application. The application for condoning the delay was allowed . But, when the application to set aside the ex parte award was filed, the Labour Court took the view that after the award was passed, the Labour Court becomes functus officio and therefore, it could not entertain the said application and dismissed the same. The aggrieved Management filed W.P. No.10884 of 2006 and the instant writ petition viz. W.P. No.10882 of 2006.

5. On an earlier occasion, W.P. No.10884 of 2006 was taken up for consideration by this Court and this Court, affirmed the order of the Labour Court, observing that the Labour Court has become functus officio and hence the order of the Labour Court, rejecting the request of the petitioner-Management to set aside the ex parte award was perfectly correct. Now the instant writ petition was taken up for enquiry.

6. Advancing arguments on behalf of the petitioner, learned counsel would submit that a reading of the award under challenge would clearly reveal that it is an ex parte award. The only witness who was examined before the Labour Court on that day was P.W.1, the second respondent herein and thus opportunity was not available for the petitioner-Management to put forth his case. Nowhere the Labour Court refers to the order of termination, which was challenged before that Court. A reading of the entire order would reveal that the contentions put forth by the petitioner-s side were not considered to arrive at a decision. Once the Labour Court has not passed the order on merits, it is a fit case where an opportunity should be given to the Management to put forth its case. For that purpose, an ex parte award has got to be set aside.

7. Learned counsel would further add that after the ex parte award was passed, an application to set aside the ex parte award was filed before the Labour Court along with an application to condone the delay in filing an application to set aside the ex parte award. After condoning the delay, the Labour Court took the view that an application

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to set aside the ex parte award could not be entertained since it becomes functus officio. The delay is neither wanton nor inordinate. Since there is no laches on the part of the Management, the application to set aside the ex parte award has got to be ordered.

8. Countering the above contention, learned counsel for the second respondent would submit that an order of termination was passed in the year 1998 and the same was taken up before the Labour Court as I.D. No.110 of 1999. The matter was pending for few years. For few occasions, the matter was adjourned, but the Management did not appear. Under the circumstances, an award came to be passed on 9.5.2002 by the first respondent-Labour Court. A reading of the award would clearly indicate that all the materials available were taken into consideration; that there was no sufficient opportunity given to the second respondent at the time of enquiry and that no subsistence allowance was paid during the suspension period. After the award was passed on 9.5.2002, delay has been caused for about four or five years to file this writ petition before this Court. When all lacunas or lapses are noticed on the side of the Management, there is no question of ordering the writ petition would arise.

9. Learned counsel added further that even if it is an ex parte award, as contended by the petitioner-Management, the Management has to show as to how it suffers either factual or legal. In the absence of the same, the ex parte award passed by the Labour Court has got to be sustained and the writ petition has got to be dismissed.

10. This Court paid its anxious consideration on the submissions made by either side. It is not in controversy that pursuant to the order of termination of the second respondent, who was working as Secretary in the petitioner-Society, he took it before the Labour Court and the same was taken on file as I.D. No.110 of 1999. It is not in controversy that the Management appeared before the said Court and filed its counter. Thereafter, though few adjournments were given, the petitioner-Management did not appear. Hence, an award came to be passed finally on 9.5.2002. As against the same, the petitioner filed two writ petitions viz. W.P. Nos.10882 and 10884 of 2006 before this Court. W.P. No.10884 of 2006 was dismissed by this Court. The instant writ petition viz. W.P. No.10882 of 2006 was taken up for enquiry by this Court.

11. In the instant case, the second respondent, who was working as Secretary in the petitioner-Management, was served with an order of termination. Pursuant to the same, the second respondent filed an industrial dispute and the same was taken on file by the Labour Court as I.D. No.110 of 1999. When it was taken up for enquiry, the petitioner-Management did not appear. Under the circumstances, an ex parte award came to be passed on 9.5.2002 i.e. after a period of three years.

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12. It is to be made clear at this juncture that merely because it happened to be an ex parte award, it cannot be set aside. The Court has to look into the facts and circumstances of the case when the award came to be passed, whether it happens to be an ex parte award or any reasons have been mentioned for passing the award. A perusal of the award in question would clearly reveal that it has not only relied on the evidence of P.W.1 but also pointed out that from the time of issuance of show-cause notice till the enquiry, subsistence allowance was never paid and sufficient opportunity was not given, which, in the opinion of the Court, is sufficient to quash the charge levelled against the second respondent.

13. The contention put forth by the learned counsel for the petitioner that it is an ex parte award and hence it has got to be set aside and an opportunity to be given to the petitioner-Management to put forth its defence cannot be accepted for the simple reason that once all the materials, which were available before the Labour Court at the time of passing of award, had been gone into, no question of setting aside the award would arise, unless the petitioner-Management is able to show that it suffers either factual or legal. After the termination order passed on 27.10.1998, the second respondent filed I.D. No.110 of 1999, pursuant to which an award came to be passed on 9.5.2002, but the writ petition was filed only in the year 2006. All would indicate the laches on the part of the petitioner-Management.

14. Once award was passed though ex parte on 9.5.2002, making an application to set aside the same was filed in the year 2006 i.e. after a period of four years, which, in the opinion of the Court, could not be condoned. It would quite indicate the fact of laches on the part of the petitioner-Management. It is well settled principle of law that in the writ jurisdiction, when the Court noticed laches, it would be sufficient to reject the writ petition.

15. Under these circumstances, the writ petition fails and the same is dismissed. Consequently, the connected W.P.M.P. And W.V.M.P. are also dismissed. No costs.

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To

The Presiding Officer,
Labour Court,
Salem.

+1cc to Mr.Row & Reddy, Advocate Sr 60381

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